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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 307

DRAPER & COMPANY, INCORPORATED, PETITIONER

v.

COMMODITY CREDIT CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 202-213) is reported at 113 F. Supp. 796. The opinions of the United States Court of Appeals for the First Circuit (Pet. 16-29) are reported at 213 F. 2d 36. The order denying a rehearing (R. 233), rendered without opinion, is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered May 6, 1954. A petition for rehearing was denied on June 14, 1954. The petition for a writ of certiorari was filed August 26, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Court of Appeals erred in reversing the determination of the District Court and holding that the respondent was justified in refusing delivery of wool on the grounds that it was not "in bond" as required by the contract.

STATEMENT

The petitioner brought this action upon the refusal of the respondent Commodity Credit Corporation to accept delivery under a contract for the sale of wool. The respondent answered that the wool offered had not been "in bond" as provided in the contract, and counter-claimed for liquidated damages. What the contract required by this term "in bond," and whether the breach, if any, was sufficiently material to justify refusal, were the sole issues presented. These the District Court resolved in favor of the petitioner. The Court of Appeals, determining these issues differently, reversed and ordered judgment for the respondent. The petition is directed solely to the power of the Court of Appeals to reverse the decision of the trial court.

On December 6, 1950, Commodity Credit Corporation issued its Public Announcement LS-262, stating its intention to purchase about 30,000,000

pounds of wool, and setting forth the terms and conditions on which bids would be received (R. 4-12, Pet. 18-19). In part, this announcement provided that "Wool offered for sale * * * must not have had United States Customs' duties paid thereon," (R. 4-5, Pet. 19), and later under the heading "Eligible Wool" the following was specified (R. 6, Pet. 19):

> Wool eligible for sale * * * shall be wool offered to Commodity Credit Corporation for delivery in bond in the warehouse in the continental United States, designated by the vendor in the offer of sale. However, unless otherwise announced, only wool offered for delivery in store at the Boston Army Base, Boston, Massachusetts, will be considered.[1]

On December 18, 1950, the petitioner submitted the following telegraphic offer (R. 38, Pet. 19-20):

> Undersigned offers to CCC, subject to terms and conditions of announcement LS-262 ninety-eight thousand greasy pounds of wool item 234 at dollar eightyseven cents per pound clean basis, in bond, to be delivered in Boston Army Base, Boston, not later than March fif-

[1] The Boston Army Base was not a bonded warehouse at the time of this announcement or when the contract was entered, but was so designated on January 2, 1951, before any wool was to be delivered under the contract (R. 205). An issue as to whether this designation was valid in light of 19 U.S.C. 1560 was left unresolved by the District Court since it believed only the status as of the time of the contract was relevant (R. 210).

teen, 1951 Estimated total value one hundred eighteen thousand dollars.

Similarly worded offers were made of 98,000 pounds at $1.88 on the same day (R. 39, Pet. 20), and of 196,000 pounds at $1.88 on December 26 (R. 46, Pet. 20). Written offers followed (R. 40-41, 48-49, Pet. 20). The respondent accepted these offers by telegram on December 20 and 27 (R. 39, 47). These documents (announcement, offers, and acceptances) constituted the entire contracts in issue (R. 205).

Deliveries were delayed, and extensions granted by the respondent. When the wool was delivered, all but about 98,000 pounds was rejected as not in conformity with the description of item 234 (R. 206, Pet. 21).[2] One-hundred-twenty-six of the rejected bales were sold to Bigelow-Sanford Carpet Company, being withdrawn from the warehouse conditionally free of duty under paragraph 1101 of the Tariff Act of 1930, as amended, June 25, 1938, 52 Stat. 1090,[3] and the responsibility for any duties being transferred to the Carpet Company (R. 206, Pet 21). When the petitioner later learned that the respondent had accepted some rejected wool which had been regraded, it obtained an additional

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[2] Item 234 was described as "Buenos Aires 5-S (40-S) Super Fleeces, fully skirted, Practically free 5½"-8" " (R. 204, Pet. 19).

[3] Under this provision, certain wool may be imported free of duty to be used in the manufacture of carpets, a bond being required of the manufacturer to cover duties in the event the wool is diverted to other purposes.

extension of time, repurchased the 126 bales from the Carpet Company, along with 23 other bales admitted conditionally free from duty under a "carpet bond", and regraded them together with five bales which it had imported itself and entered for warehouse (R. 206, Pet. 21). Petitioner then tendered 237 of the 261 bales of regraded wool in satisfaction of the contract, but the respondent refused delivery on the ground that the wool had lost its "in bond" status—required by the contract (*supra,* pp. 3-4)—on being sold to the Carpet Company (R. 207, Pet. 22).

The petitioner contended that by the term "in bond" the contract required that no duty have been paid on the wool, but that possible liability for customs be secured by bond. Since no duties had been paid at any time on the wool offered, and since the wool had at all times been secured under either petitioner's general term bond or the Carpet Company's "carpet bond", the petitioner argued that delivery had been in accordance with the contract, and that the respondent's refusal constituted a breach.

In the respondent's view, the disputed term had been intended to insure that only wool which had not become a part of the nation's domestic stocks would be received, by requiring that the wool have been kept in customs custody. By offering wool which had been withdrawn from such custody and sold for domestic use, the petitioner, in this view, had frustrated the purpose of the contract. The background of the program under which the con-

tract was made was introduced in substantiation of the respondent's interpretation.

In September 1950, Congress authorized the purchase of 100,000,000 pounds of wool and woolen goods for use of the armed services. 64 Stat. 1044 (R. 202-203, Pet. 17-18). The Senate debate on the measure indicates an awareness of a shortage in domestic stocks of raw wool occasioned by the hostilities in Korea, and an intention to supplement these stocks by importation. See 96 Cong. Rec. 14785-14786. On October 2, 1950, the respondent informed various wool-trade associations that it had "been requested to undertake the acquisition of certain foreign wools for the Department of the Army," and invited their participation in a discussion of the procurement program "in an effort to develop a program which will not disrupt normal marketing conditions" (R. 30). The Boston Wool Trade Association, on November 7, 1950, submitted recommendations in reply to this invitation. Among these was the following (R. 31, Pet. 24):

> 2) Eligibility of offerings.
> (a) Wool must have originated outside the United States, Canada, Mexico, Iceland, Alaska.
> (b) All wool that has not entered into the commerce of the United States, namely wool in-bond, is eligible regardless of whether it was purchased or had arrived prior to date of sale to C.C.C.

(The committee of the Boston Association which prepared the recommendations was composed in

part of the Public Relations Committee whose chairman was the president of the petitioner (R. 20-21)).

The Quartermaster Corps then contracted with the respondent on December 5, 1950, for the acquisition and sale of 30,000,000 pounds of wool "produced outside the United States," the wool to have been delivered to the respondent "in bond without payment of customs duties" (R. 34-35). Public Announcement LS-262 was thereupon made (*supra*, pp. 2-3) and the instant contracts consummated.

In support of its interpretation, the petitioner put into evidence its own invoices to third parties in which "in-bond" had been used to signify that the prices stated did not include any customs paid. It stressed that in its offers the term had appeared immediately after the price and had not modified the verb "delivered". It also pointed to customs statutes and regulations which had used the term to indicate that goods had not had duty paid upon them.

The District Court found for the petitioner on the ground that "the important characteristic of wool in bond would seem to be the fact that no duty has yet been paid on it" (R. 211). Moreover, that court found that even if the respondent's view were accepted, the breach had not been material because "it is wool which except for [the purchasing program] might never have been imported," even though "it may have been temporarily diverted to a proposed domestic use." (R. 212.) The Court of Appeals reversed, holding (Pet. 23) that while "the plaintiff has presented strong arguments in

support of its interpretation of the phrase 'in bond' * * * we do not believe * * * that the usage of the phrase in plaintiff's dealings with third persons and its usage in customs statutes and regulations is as persuasive in revealing what the parties meant as (1) the evidence in the record which discloses what actually transpired between these two parties in preparing and formulating their contracts and (2) provisions in the contracts which indicate what the parties intended the phrase 'in bond' to mean."

ARGUMENT

The petitioner contends that both the meaning of the "in bond" requirement and the materiality of any deviation from that requirement presented questions of fact which were resolved by the trial court. The Court of Appeals, it argues, substituted its own judgment on these issues for one that had not been "clearly erroneous," and hence exceeded its authority under Rule 52(a), F.R.C.P., to review findings of a court sitting without a jury. But petitioner's position is without merit and does not call for review by this Court.

1. It is far from clear that the disputed issues were questions of fact, findings on which were subject to reversal only if "clearly erroneous". This point was not raised in the Court of Appeals until the petition for rehearing was filed, and as that was denied without opinion, it is not certain how the court may have categorized these questions, whether as factual matters on which the decision of the trial

court was "clearly erroneous" or as issues for legal interpretation.

As a general rule, the interpretation of written contracts is a matter for the court, and not for the jury. It is true that this Court has held that (*Brown & Company* v. *M'Gran,* 14 Pet. 479, 493):

> * * * there certainly are cases, in which, from the different senses of the words used, or their obscure and indeterminate reference to unexplained circumstances, the true interpretation of the language may be left to the consideration of the jury, for the purpose of carrying into effect the real intention of the parties.

But it should be noted that the words of that opinion are permissive rather than mandatory, and that the case fell within the group of which Professor Corbin says (3 Corbin, *Contracts,* § 554 at pp. 121-122):

> Even in the case of an integrated written contract, the meaning of the words may depend upon various surrounding circumstances that are in dispute; the circumstances must be found as a fact before interpretation can proceed. Here again, a special verdict may be possible but may not be regarded as practicable, and the whole undivided problem may be left to the jury.

The instant case, on the other hand, did not involve such "objects, and intentions, and agreements

of the parties * * * to be arrived at only by allusions to circumstances which are but imperfectly developed" as the Court noted in the *Brown & Company* case. There was no material dispute as to any of the circumstances under which this contract arose. It is of this type of controversy that Professor Corbin lays down the rule (3 Corbin, *Contracts,* § 554 at pp. 122-123):

> If the words of agreement, whether oral or written, are definite and undisputed, and if there is no doubt as to the relevant surrounding circumstances, the interpretation of the words is ordinarily held to be a matter for the court.[4]

Certainly, the trial court appears not to have treated its interpretation of the contract as a factual determination. Its opinion is divided into three parts: "Findings of Fact"[5] (R. 202-208), "Discussion" (R. 208-212), and "Conclusions of Law" (R. 212-213). The determination of the contractual issues falls in the second part. Moreover, the judge's treatment of the matter is in the conventional form of a discussion of an issue of law. He did not view the meaning of the term "wool in bond" as ambiguous or as dependent on special

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[4] This is clearly the rule in Massachusetts, the domicile of the petitioner and the place of performance of the contracts in issue. *Atwood* v. *Boston,* 310 Mass. 70, 37 N.E. 2d 131.

[5] The nonfactual nature of the controversy is borne out by the trial judge's adopting the stipulated facts "for the most part" in his Findings (R. 202).

facts urged by one party or the other, and indeed he selected as its "important characteristic" what was true under the construction argued by either party, namely that no duty would have been paid upon it. But in making paramount this consideration he was simply attributing controlling legal significance to a factor which the Court of Appeals found less relevant to the particular case than others equally undisputed.

2. Even if appellate review of the trial court's determination of the disputed issues was subject to Rule 52(a), the decision of the Court of Appeals was clearly consonant with the rulings of this Court. That Rule provides that the findings of fact by a judge sitting without a jury

> * * * shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. * * *

Where, as in this case, there have been no issues of credibility, and the evidence has been undisputed, and almost entirely documentary, this Court has at least three times denied review when courts of appeals have asserted broad power in such circumstances to reweigh the evidence themselves. *Fleming* v. *Palmer,* 123 F. 2d 749 (C.A. 1), certiorari denied *sub nom. Caribbean Embroidery Cooperative, Inc.* v. *Fleming,* 316 U. S. 662; *Orvis* v. *Higgins,* 180 F. 2d 537 (C.A. 2), certiorari denied, 340 U. S. 810; *Dollar* v. *Land,* 184 F. 2d 245 (C.A. D.C.), certiorari denied, 340 U. S. 884.

It is certain, in any event, that a finding, to be "clearly erroneous," need not be based on so little or insubstantial evidence that no reasonable person could accept it. This Court has said (*United States* v. *United States Gypsum Company*, 333 U. S. 364, 395):

> A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.

Thus it is not true, as petitioner suggests (Pet. 7), that the Court of Appeals could not have found the findings of the district court "clearly erroneous" because it may have recognized that the petitioner had "presented strong arguments" and there was evidence in its favor. Nor did the Court of Appeals violate the rule announced in *United States* v. *Yellow Cab Company*, 338 U. S. 338, 342, that "a choice between two permissible views of the weight of evidence is not 'clearly erroneous' ", for its decision plainly was that the position of the district court was not an acceptable alternative when "the entire evidence", including much that was more closely related to the contracts, was considered.[6]

3. The material upon which the Court of Appeals relied is clearly sufficient to establish "a definite

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[6] For a more extensive discussion of the power of an appellate court to review findings made by a court sitting without a jury, see the Brief for the United States, pp. 25-30, in *McAllister* v. *United States*, No. 23, this Term, pending on writ of certiorari.

and firm conviction that a mistake [had] been committed." We review only briefly the survey by the Court of Appeals of the evidence disclosing "what actually transpired between these two parties" (Pet. 23-25). The invitation to the wool-trade associations specified that respondent was undertaking "the acquisition of certain foreign wools" (R. 30). The Boston Association, of which the president of the petitioner was an important member, recommended that only "wool that has not entered the commerce of the United States, namely wool in-bond" should be eligible.[7] The president of the petitioner testified as to the discussions that the respondent (R. 129):

> * * * started off by wanting everything imported into the country. They wound up by allowing people to sell CCC wool that had been in bond for any amount of years, sitting in the country.

He explained that "wool in bond" was "just under the custody of Customs" (R. 130). The contract between the respondent and the Quartermaster General provided that the wool must have been produced "outside the United States," and indi-

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[7] The petitioner has argued that since wool in a bonded warehouse may be traded in by means of warehouse receipts it is in the commerce of the United States. Such trading of course can be done in wool stored anywhere in the world. A more important factor would seem to be that wool in a bonded warehouse may be re-exported without payment of customs; wool under "carpet bond" may not. *Khosrovschahi & Company* v. *United States*, 38 C.C.P.A. 40.

cated that it would be inspected "at the port of entry" or in "designated bonded warehouses" (R. 34, 35). Even if the petitioner did not know of the provisions of this contract, the respondent's Public Announcement required notification "upon the arrival in the bonded warehouse of wool tendered under this announcement" (Par. 11, R. 8), and provided that "at the time of arrival of shipments of wool * * * a separate declaration must be made to the Customs Bureau for each Item * * *" (Par. 18, R. 11). Special provision was made for wool which was already in the United States when under the custody of the customs, but no similar provision was made for such wool when it had been released from custody (Pars. 7, 12, R. 7, 8).[8]

The sum of this evidence evinced an intention that only wool which would not draw on domestic stocks would be acceptable to the respondent, and the Court of Appeals properly reversed the contrary holding of the trial judge.

4. Since the prime purpose of the transactions had been frustrated by the petitioner, and since the District Court's erroneous assumption as to the paramount consideration in the use of the term "in bond" was the foundation for its decision that the breach, if any, was not sufficiently material to justify a refusal of delivery, the Court of Appeals

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[8] The Public Announcement specified "delivery in bond" (R. 6), in addition to requiring that the wool "not have had United States Customs' duties paid thereon" (R. 5).

was clearly correct in reversing that holding as well, and in ordering judgment for the respondent.[9]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER, 1954.

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[9] Moreover, the District Court's conclusion that what was offered was "wool which except for that program might never have been imported" (R. 212) was clearly inapplicable to at least those 23 bales which the petitioner had imported and sold directly to the Carpet Company, and which it later repurchased, together with the 126 bales originally rejected by the respondent (R. 206).

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